

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

SPARTECH CORPORATION

and

Cases 21-CA-36049
21-CA-36056
21-CA-36148
21-CA-36274
21-CA-36303

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 170,
AFL-CIO

Alan L. Wu, Esq., Los Angeles,
CA, for the General Counsel

*Michael A. Hood, Esq., of Paul,
Hastings, Janofsky & Walker LLP,*
Costa Mesa, CA, for the Respondent

Robert Sanchez, Organizer,
for the Union

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Los Angeles, California on October 18 and 19, 2004. The initial charge was filed on November 14, 2003 by Sheet Metal Workers International Association, Local Union No 170, AFL-CIO (Union). Thereafter the Union filed additional charges. On June 30, 2004, the Regional Director for Region 21 of the National Labor Relations Board (Board) issued a Second Order Consolidating Cases, Amended Consolidated Complaint and Amended Notice of Hearing alleging violations by Spartech Corporation (Respondent) of Section 8(a)(1) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel) and counsel for the Respondent.

Upon the entire record,¹ and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent is a Delaware corporation with a manufacturing plant located in La Mirada, California where it is engaged in the manufacture of thermoplastics. In the course and conduct of its business operations, the Respondent annually sells and ships from its La Mirada facility goods valued in excess of \$50,000 directly to points outside the State of California. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. Issues

The principal issues in this proceeding are whether the Respondent has violated Section 8(a)(1) of the Act by various statements to employees, including threats of plant closure and plant relocation in the event they selected the Union as their collective bargaining representative.

B. Facts, Analysis and Conclusions

1. Respondent's November 10, 2003 Speech to the Employees

Following the filing of a representation petition by the Union an election was scheduled for November 25, 2003. The election has been blocked by the charges filed in the instant case. The complaint alleges that the Respondent has committed certain Section 8(a)(1) violations both prior to and after the scheduled election.

¹ The General Counsel's motion to correct the transcript, at p.6 of the General Counsel's brief is granted as follows: Transcript p. 58, line 18, is corrected to change "had a" to "and".

It is alleged in the complaint that on November 10, 2003, the Respondent's Vice-President of Western Operations, William H. Hiatt, Jr., held various meetings with groups of employees and, through a Spanish interpreter, threatened employees with closing the plant and relocating the plant to Mexico in the event the employees selected the Union as their collective bargaining representative, and made statements indicating the futility of union representation.

Various employees testified that during the course of his 40-minute speech, Hiatt, who spoke in English, made various statements through his Spanish interpreter about plant closure, relocating to Mexico and the futility of selecting a union to represent them.

Mario Robledo, a current employee of the Respondent, is a machine operator and has worked for the Respondent for 21 years. Robledo testified that at the meeting he attended, Hiatt said that the company would not accept the union and that if there was a strike or if the union came in he could replace the workers and also had the option of moving the company to Mexico.

Pablo Valdez is a current employee and has worked for the Respondent for about five years. He is a machine operator. Valdez testified that Hiatt said if the Union got in, the company could move production operations to Mexico.

Mauricio Pena is a former employee. Pena testified Hiatt said if the Union got in and if the company did not come to an agreement with the Union as to the money the Union was asking from the company, then the company could go to Mexico.

Manuel Ramirez is a former employee. Ramirez testified Hyatt said during his speech that it was too hard to have two bosses and should this happen the company could move. He said it was hard for him to sit down and have a conversation with the Union. He said that possibly he would not sit down to negotiate.

It was stipulated that on November 10, 2003, Hiatt read the same prepared text consisting of 14 pages at each of three meetings to assembled employees. Hiatt testified that he did not deviate from the text. Ana Arraola, a bookkeeper for the Respondent, translated the speech from English to Spanish for the employees. Arraola testified that she is fluent in both Spanish and English and stood next to Hiatt during his speeches. She was looking at the prepared text while translating what Hiatt read, and testified that Hiatt stated what was in the printed text. The portion of the speech that refers to plant closure or relocation is as follows:

Now let's look at the second question. If you voted the union in, would your jobs be more or less secure than they are now? I'm not a fortune teller. I can't tell you for sure what would happen if you voted this union in. But I think that with a union, your jobs could be less secure than they ever have been. Why is that?

Let's take a look at what could happen. Let's say the union was elected here and we started negotiations for a contract. Let's say, too, that the union made a lot of unreasonable demands on the Company in negotiations. That isn't too far fetched, given all the promises I understand they have been making to you to get your vote. Now, if they did that two things could happen (sic)

One thing that could happen is that the Company could just give in to the union's unreasonable demands. That might seem great for a minute. But think what would happen if the Company did that. As we have already pointed out to

you, we already pay wages and benefits that are equal to or above any of our competitors, union or non-union. So if we gave in to unreasonable demands, we would have to find a way to get more money to cover the increased costs. And there is only one way I know of to do that - increase our prices. You and I know what would happen if we did that. Our customers would leave us and go to any of our competitors who charge less for their products than we do.

And if we start to lose business because our prices are too high, we obviously wouldn't need as many workers as we have now. That means layoffs. If things got bad enough, it could mean no jobs at all - Spartech might decide just to consolidate manufacturing at our plant in Mexico, and could decide to close this plant down. So, if we gave into unreasonable demands, chances are that before too long, you and I would be standing in the line together at the unemployment office, collecting our unemployment checks.²

Of course, talking to you about giving in to unreasonable union demands is really a lot of guesswork. Because the fact is the Company could not and would not give into unreasonable union demands. Our competition just wouldn't allow it. So if the union made unreasonable demands the Company couldn't agree to, then there would be no contract - and the union would have two choices. They could come back down from their demands. Or they could call you out on strike. You see, the only way the union can try to get the Company to agree on something that the Company doesn't believe is in your best interests or the Company's is to call you out on a strike.

Then, near the end of the speech, after listing the adverse effects of a strike on employees, Hiatt states:

Now, I'm not saying that there will be a strike if the union wins the election. But why take a chance? The union sure can't guarantee you that there won't be one. Strikes only occur when there are unions around. Remember that strikes don't hurt the union organizers. Their pay keeps coming in whether yours does or not. And a strike wouldn't hurt the Company in the long run—we would keep operating with permanent replacements. The big losers in a strike are always the workers and their families.

So this is why I say that voting for the union could have a very bad effect on your job security here. On all of ours.

I credit Hiatt and Arraola and find that Hiatt did not deviate from the prepared text.

The General Counsel also maintains that even if Hiatt read the text correctly, nevertheless his interpreter, Arraola, misconstrued and/or mis-interpreted what Hiatt said, and conveyed a message to the assembled employees that deviated from the prepared text. In this regard, the testimony of Manuel Ramirez is particularly significant. Thus, when the pertinent paragraph was translated at the hearing, Ramirez, a witness called by the General Counsel, testified that that this was "exactly" what Hiatt said. And while the General Counsel suggests

² This paragraph was translated by the official interpreter at the hearing to Manuel Ramirez. Ramirez was then asked if this is what Hiatt said about the plant being moved. Ramirez stated, "Exactly."

that Arraola's translating abilities may not be as proficient as those of the certified interpreter, the General Counsel made no attempt to test Arraola's translating abilities at the hearing. I find the employees who testified that Hiatt made clear and unqualified threats of plant closure or relocation to Mexico or said that the Company would not accept the Union, simply were not
 .5 attuned to the nuances of Hiatt's remarks and gave attenuated and inaccurate accounts of those remarks. This is certainly understandable given the length of Hiatt's speech, the volume of information presented, and the fact that the employees, unlike the parties to this proceeding, did not have the text of the speech before them to review in order to discern exactly what was being communicated. Nevertheless, the statements actually made by Hiatt, not the employees'
 10 subjective interpretation of those statements, are determinative of the issues in this proceeding.

Next, the General Counsel maintains that the text itself contains unlawful threats. I do not agree. Hyatt states in his speech that he doesn't know what will happen if the Respondent has to bargain with the Union, and gives his opinion that employees' jobs could be less secure.
 15 First, he explains that if the Respondent gives in to unreasonable union demands, then it could become less competitive and lose business; this could result in layoffs or possible closure of the plant and relocation of the remaining work to its existing plant in Mexico. But then Hiatt tells the employees that this scenario is not realistic and would not happen. Hiatt then explains that since the Respondent would not give in to unreasonable demands, the Union could either back
 20 down from its demands or, in the alternative, there could be a strike. And in the event of a strike, Hiatt says, "a strike wouldn't hurt the Company in the long run—we would keep operating with permanent replacements if there is a strike." After detailing the adverse consequences of a strike upon employees, Hiatt states, "Now, I'm not saying that there will be a strike if the union wins the election. But why take a chance?" "

In the final analysis, Hiatt makes it clear that even if the Union gets in, and there is a strike, the plant will keep operating. Therefore, it seems that the record evidence does not support the complaint allegations regarding plant closure and relocation. I do not believe Hiatt's remarks exceed the bounds of permissible electioneering, and I shall dismiss the allegations of
 30 the complaint pertaining to the unlawfulness of Hiatt's November 10, 2003 speech. See *Novi American, Inc.*, 309 NLRB 544 (1992); *Tri-Cast, Inc.*, 274 NLRB 377, 378 (1985). Cf. *AP Automotive Systems, Inc.*, 333 NLRB 581 (2001) (inevitability of a strike, plant closure, and job loss).

35 2. Other Alleged Section 8(a)(1) Violations

The complaint alleges that two individuals, Enrique Zavala, a sales representative who was requested by Hiatt to talk to the employees about why they wanted the Union, and Gustavo Cazenueb, a plant supervisor, committed various Section 8(a)(1) violations of the Act during
 40 their conversations with employees. Zavala, during his brief testimony, made it clear that he had a very limited recollection of any specific conversations with employees, and emphasized that he simply walked through the plant and "everybody knew me and everybody would approach me and we started a conversation." According to Zavala, such conversations about the Union were "broad—it was nothing specific." Zavala acknowledged that he did report to
 45 Hiatt about his conversations with the employees.

Gustavo Cazenueb at first testified that he was not given any instructions about talking with the employees. Later in his testimony, Cazenueb said Hiatt instructed him as follows: "He said I should not talk or give any advise (sic), to anybody, not to even mention the union."³ Cazenueb made it clear that he did not recall specific conversations. I do not credit Cazenueb.

I do not find that either Zavala or Cazenueb had an accurate recollection of specific conversations with employees, and their denials of certain statements they are alleged to have made are not convincing. Clearly, they spoke to many employees about the Union, and there is no basis for crediting their general denials and superficial responses over the testimony of employees, including many current, long-time employees, who appeared to have a clear and detailed recollection of such conversations.

Mario Robledo testified that Enrique Zavala approached him at his workstation and said that Hyatt had brought him to the plant to help him talk to the employees because the workers were trying to bring in the union.⁴ He asked why Robledo wanted to bring in the Union again.⁵ Robledo gave his reasons. Zavala said that the Respondent had many orders to fill and that if the Union got in and went out on strike the company would fill the orders from its Mexico facility. Zavala asked Robledo to relate that message to his co-workers. Robledo refused, saying that he supported his co-workers, and that Zavala would have to talk to them himself. I credit the testimony of Robledo and find that Zavala's asking Robledo why he wanted to bring the Union in is violative of Section 8(a)(1) of the Act.

Arturo Espidia is a current employee and has worked for the Respondent for 17 years. He is currently a machine operator. His supervisor was Gustavo Cazenueb. Espidia went to Cazenueb office to pick up some work orders. Another employee, Victor Cuellar, was in the office. Cazenueb asked Espidia if the employees knew what they were doing. Then, according to Espidia, Cuellar said that because of the employees who wanted the Union he was going to lose his job and it was possible that they were going to close the company and all the employees would be left without a job and it was all because of us. Cazenueb made no reply. I credit the testimony of Espidia and find the question from Supervisor Cazenueb constituted unlawful interrogation in violation of Section 8(a)(1) of the Act, as it was obviously a pointed remark about the union and placed Espidia in the position of having to express his position about the Union.

In March 2004, Cazenueb mentioned to Espidia that a machine operator's job that had apparently been given to another employee, Jaime Carballo, should have been given to Espidia. According to Espidia, Cazenueb said, "You know, that job should have been yours, you know, but you lost that because you're going around with that thing with the union." While there is very little record evidence regarding this situation, and while Espidia did in fact become a machine operator, this remark by Supervisor Cazenueb is violative of Section 8(a)(1) of the Act as it indicated that the Respondent would deny job opportunities to Espidia because of his union activity.

³ However, in Hiatt's November 10, 2003 speech to employees, Hiatt states, "Over the next few weeks, I am going to be giving you some bulletins and talking to you about just why I don't think a union is in your best interests. *Your supervisors are going to be talking to you, too, because this is very important for all of us.*" (emphasis supplied)

⁴ It was stipulated that when Enrique Zavala returned to the La Mirada, California facility in November, 2003, Mr. Hiatt instructed him to talk to the employees and find out what issues were driving the union campaign.

⁵ There had been prior unsuccessful attempts to unionize the Respondent's plant.

Martin Pena, a current employee, has worked for the Respondent for 19 years. He is a machine operator. He was talking with his assistant or helper, Rafael Zavala, regarding a work-related matter when Gustavo Cazenueb came up and asked if he was talking about the Union. Pena said no. A little while later Cazenueb came back and said that if he continued talking he was going to move Pena to the other plant or change his shift. Shortly thereafter, Pena's helper was moved to another line, and Pena was given a different helper. It is necessary for machine operators and helpers to communicate about work related matters. It is alleged that this conduct of Cazenueb constitutes unlawful interrogation in violation of Section 8(a)(1) of the Act. The record does not show whether employees were permitted to discuss non work-related matters while they were operating machinery. However, as it appears that Cazenueb was only interested in knowing whether Pena was discussing the Union with his helper, I agree that this constitutes unlawful interrogation.

One day Cazenueb called Pena into his office. Two other employees were in the office, and Cazenueb, referring to the two other employees, said, "[L]ook, look, they do not accept the union. They listen, they watch TV, and they listen to the radio and they have overtime privileges." Cazenueb went on to say that Pena would have "to produce more work for accepting the union." Pena replied that Cazenueb was not fair or equal with all the employees. Cazenueb said he knew that, but he was the supervisor. I credit the testimony of Pena and find that Cazenueb's remarks violated Section 8(a)(1) of the Act. Thus, Cazenueb made it clear that employees who did not support the Union would be given more favorable treatment.

Jesus Soria, a current employee, has worked for the Respondent for 16 years. He is a machine operator. Soria testified that Enrique Zavala came to his workstation about 7 or 10 days before the scheduled election and asked why the employees did not get together and first go to Hiatt with their problems before seeking a union. Soria replied that Hiatt was a busy man and did not have time for their problems, and that the election was too close and it was too late to go to Hiatt. Zavala said, according to Soria, that the company was very strong and it was not convenient for us to get into trouble with unions. He also said that in very difficult circumstances, if the union came in and there was no agreement, the company could close for one year with no problem, and the employees would be without any income. And the company had the production power so it could transfer orders from the La Mirada plant to another location. He said that Hiatt had brought him over from Mexico to speak to the employees and learn what their problems were. Zavala also told him that Hiatt knew who had attended a meeting with the union that had taken place a day or two before. Soria responded that the employees didn't care because they were not hiding this from anyone, and that Zavala would quite possibly be invited to come to the next meeting. The only alleged violation emanating from this conversation is the statement by Zavala that Hiatt was aware of the identity of employees who had attended a recent union meeting. I credit Soria, and find that by this remark Zavala created the impression of that the Respondent was engaging in surveillance of employees' union activities in violation of Section 8(a)(1) of the Act.

Soria also testified that he happened to be in Gustavo Cazenueb's office when Cazenueb asked him "[W]hy do you guys want a union?" Soria said he did not want to talk to him about the union and left his office. I credit Soria and find that this conduct of Cazenueb constitutes unlawful interrogation in violation of Section 8(a)(1) of the Act.

Soria testified that Cazenueb was talking to a group of three or four employees when Soria walked by. He overheard Cazenueb mention something about the possible closure of the company and moving it somewhere else. Soria laughed, and said he could not believe the company would move as it had just invested a lot of money in electric generators. Cazenueb said the company is too strong, they don't care, and It's not an inconvenience for them to move

the company from one place to another. I shall dismiss this allegation of the complaint as it is not clear what Cazenueb or the other employees had said before Soria happened to walk by and overhear their conversation.

.5 Manuel Ramirez testified that Zavala started a conversation with him at his machine and said Hiatt was worried because of what the employees were doing about the Union and wanted the employees give him their comments because Hiatt wanted to have it more clear in his mind why we were wanting changes. Zavala said that if the Union came in little by little, that they were going to dismantle the company and it would move and "people that did not have a good
10 Social Security Number---they were asking for a good Social Security Number—they would be fired. The only alleged violation from this conversation is the threat to discharge workers who did not have valid social security numbers if the Union got in. I credit the testimony of Ramirez and find that by such conduct the Respondent has violated Section 8(a)(1) of the Act.
15 *Corrugated Partitions West*, 275 NLRB 894, 898 (1985).

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated and is violating Section 8(a)(1) of the Act as found herein.

The Remedy

30 Having found that the Respondent has violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

ORDER⁶

The Respondent, Spartech Corporation, its officers, agents, successors, and assigns, shall:

- 40 1. Cease and desist from:

(a) Interrogating employees regarding their union activity.

(b) Advising employees that they would be denied work opportunities if they supported the Union.

⁶ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Suggesting that employees who did not support the Union would be given more favorable treatment.

(d) Telling employees that the Respondent knows who attended union meetings.

(e) Threatening to discharge employees who did not have valid social security numbers.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

1. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

(a) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: January 18, 2005

Gerald A. Wacknov
Administrative Law Judge

⁷ If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing and Order of the National Labor Relations Board."

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT question employees about their union activity on behalf of Sheet Metal Workers International Association, Local Union No. 170, AFL-CIO, or any other labor organization.

WE WILL NOT tell employees that they will be denied work opportunities if they support the Union.

WE WILL NOT tell employees that we will give more favorable treatment to employees who do not support the Union.

WE WILL NOT tell employees that we are aware of the employees who attend union meetings.

WE WILL NOT threaten to discharge employees who do not have valid social security numbers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed them by Section 7 of the Act.

SPARTECH CORPORATION
(Employer)

Dated: _____ By: _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 888 South Figueroa Street-9th Floor, Los Angeles, CA 90017-5449. Phone (213) 894-5200.